

REMARKS

Status of the Claims

Claims 1, 6-9, 16, 17, 19, 21-25, 27-48, and 56-90 are pending, with claims 1 and 56 being the only pending independent claims. In this Response, claims 1, 16, 19, and 27 have been amended, claims 15, 18, 20, and 26 have been cancelled, and claims 56-90 have been newly added.

Exemplary support for the claim amendments can be found throughout the specification and claims as filed.

Applicants respectfully request the Examiner to reconsider and withdraw the outstanding rejections in view of the foregoing amendments and the following remarks.

Pending Claims

Initially, it should be noted that the pending claims are directed to a goniochromatic/light reflecting cosmetic makeup composition and a method of using the goniochromatic/light reflecting cosmetic makeup composition. More particularly, amended independent claim 1 recites a goniochromatic/light reflecting cosmetic makeup composition, comprising: (a) at least one goniochromatic coloring agent, wherein said at least one ***goniochromatic coloring agent is such that a variation Dh of the hue angle thereof of at least 30° is observed on a layer of such cosmetic makeup composition, for an illumination at 45° and a variation of the angle of observation of between 0° and 80°*** ; and (b) an amount of light reflective particles different from said at least one goniochromatic coloring agent, wherein the light reflective particles are particles of a synthetic substrate made from glasses and the light reflective particles are at least partially coated with at least one layer of at least one ***metallic compound having a spectral reflectance in the visible spectrum of at least 70% and being present in the composition in an amount ranging from 0.1% to 20% by weight relative to the total weight of the composition***, formulated into (c) a topically applicable, physiologically acceptable medium therefor, said ***composition having a mean gloss greater than or equal to 30 and creating an optical volumizing effect once applied to a support or a substrate***.

The claimed composition provides consumers cosmetic compositions capable of creating a volumizing effect after being applied on a support. (See, for example, page 2, paragraph [0006] and page 3, paragraph [0010] of the present specification).

Applicants respectfully submit that the claimed composition provides a specific combination of light reflective particles capable of creating highlight points visible to the naked eye with goniochromatic coloring agent capable of creating variation of the hue of the color according to the position of the observer renders a particular visual effect giving the perception of a three dimensional effect or pulping effect.

Therefore, the goniochromatic agent and the light reflective particles appear to act in a synergistic way to provide this volumizing effect. Applicants respectfully submit that such a synergistic effect is unexpected to one of ordinary skill in the art in view of the cited art as discussed hereinbelow.

Claim Rejections Under 35 U.S.C. § 103

Claims 1, 6-9, 15-28, 30-41, and 43-48² have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over FR 2777178 (hereinafter "Simon"; Equivalent to U.S. Patent No. 6,451,294) in view of Applicants' disclosure and EP 1082952 (hereinafter "Ramin"; Equivalent to U.S. Patent No. 6,491,932). Applicants respectfully disagree with the rejection; therefore, this rejection is respectfully traversed.

Initially, it should be noted that the Office has the initial burden of establishing a ***factual basis*** to support the legal conclusion of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). For rejections under 35 U.S.C. § 103(a) based upon a combination of prior art elements, in *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007), the Supreme Court stated that "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some ***articulated reasoning with some rational underpinning*** to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) (emphasis added).

Simon relates to the technical problem of providing cosmetic compositions, the colors of which are varied and are still intense. (Col. 1, lines 34-45).

² As claims 15, 18, 20, and 26 have been cancelled in this response, the rejection of these claims is moot.

In contrast, as provided above, the presently pending claims recite a goniochromatic/light reflecting cosmetic makeup composition comprising a goniochromatic coloring agent *and* light reflective particles made from glass at least partially coated with at least one layer of at least one metallic compound, wherein this composition provides a volumizing effect due to the synergistic combination of the goniochromatic agent and the light reflective particles.

Simon does not disclose or suggest compositions that create a volumizing effect. As such, Applicants respectfully submit that a person of ordinary skill in the art could not have been motivated to consider Simon's disclosure for the purpose of obtaining the pending claims.

More particularly, Applicants respectfully submit that Simon addresses the issue of colors variation and intensity by teaching a make-up kit comprising two compositions to provide a bilayer make-up. (Col. 1, lines 14-22). It is respectfully submitted that in such kit, the goniochromatic colorant on one side and additional coloring agents on the other side have to be distributed each in one composition, and both compositions have to be packaged advantageously separately. (Col.2, lines 55-67). Because of a resulting bilayer make-up, the goniochromatic agent and the additional coloring agents are not mixed. This aspect is illustrated by the nail varnish formulation provided in the example wherein the varnish base contains a goniochromatic colorant and the nail varnish top coat comprises the additional colorants. (Col.9, lines 11-60).

Applicants respectfully submit that Simon teaches that different colors are obtained depending on the thickness of the various layers of composition containing goniochromatic colorants. (Col. 5, lines 7-8).

As such, it is respectfully submitted that it is necessary to formulate the goniochromatic agents in a composition distinct from the one containing the additional coloring agents, in order to better control its thickness. Further, it is respectfully submitted that a person of ordinary skill in the art would have been motivated to modify the thickness of the composition containing the goniochromatic agents, and not to combine together at least one goniochromatic agent and some reflective particles, in order to obtain only one composition capable of creating a volumizing effect.

Applicants respectfully submit that Simon's disclosure would not have led one of ordinary skill in the art to combine at least one goniochromatic coloring agent and some light

reflective particles, in only one cosmetic composition, in order to create an impression of volume, giving to an observer the perception of a three dimensional effect or pulping effect.

Accordingly, it is further respectfully submitted that a person of ordinary skill in the art, after reading Simon, would at most have been motivated to thicken the composition in order to physically/materially create volume.

Ramin relates to a cosmetic composition that gives a sparkling metallic appearance. (Col. 1, lines 39-43). Ramin addresses this issue by providing a cosmetic composition comprising metal-coated glass particles as coloring agent. (Col. 1, lines 4-6 and Col. 2, lines 9-3).

Applicants respectfully submit that Ramin is silent about combining the metal-coated particles with a goniochromatic coloring agent. In fact, Ramin teaches that the composition may further comprise a film-forming polymer. (Col. 2, lines 43-44). As described in Ramin, this film-forming polymer plays an important role in obtaining an improved glossy metallic and sparkly appearance, which is related more to a smooth and polished appearance and *not* a 3-D effect. (Col. 8, lines 8-11).

Accordingly, with regard to Ramin's disclosure, a person of ordinary skill in the art would not have combined Ramin's metal-coated particles with a film-forming polymer to obtain the presently recited goniochromatic/light reflecting cosmetic makeup composition.

Applicants respectfully submit that Ramin's disclosure is not related to the object of the present claims or the object of Simon. It is respectfully submitted that there is no reason that a person of ordinary skill in the art would have consulted Simon and Ramin, either alone or in combination to obtain the pending claims.

Even if it is assumed that one of ordinary skill in the art would have considered the combination of Simon and Ramin, Applicants respectfully submit that a person of ordinary skill in the art would not reach the pending claims as he would only consider the metal-coated glass particles as being an additional coloring agent with respect to the goniochromatic agent and he would have necessarily formulated those compounds in separate compositions in order to obtain cosmetic effects that are completely different from those of the present disclosure.

Accordingly, Applicants respectfully submit that Simon and Ramin do not provide any motivation or suggestion to one of ordinary skill in the art to combine in a single formulation a goniochromatic coloring agent and particles of glass coated with metal.

More particularly, Applicants respectfully submit that after reading Simon and Ramin, a person of ordinary skill in the art would not obtain a goniochromatic/light reflecting cosmetic makeup composition, comprising, *inter alia*, ***at least one goniochromatic coloring agent, wherein said at least one goniochromatic coloring agent is such that a variation Dh of the hue angle thereof of at least 30° is observed on a layer of such cosmetic makeup composition, for an illumination at 45° and a variation of the angle of observation of between 0° and 80° , at least one metallic compound having a spectral reflectance in the visible spectrum of at least 70% and being present in the composition in an amount ranging from 0.1% to 20% by weight relative to the total weight of the composition, wherein said composition having a mean gloss greater than or equal to 30 and creating an optical volumizing effect once applied to a support or a substrate.***

Therefore, in light of at least the foregoing, Applicants respectfully submit that independent claim 1 is not obvious over Simon in view of the present disclosure and Ramin. Moreover, as claims 6-9, 16, 17, 19, 21-25, 27, 28, 30-41, and 43-48 depend directly or indirectly from claim 1, claims 6-9, 16, 17, 19, 21-25, 27, 28, 30-41, and 43-48 are not obvious for at least the same reasons.

Accordingly, withdrawal of the obviousness rejection is respectfully requested.

Claims 1, 6-11, 15-20, 26-29, and 33-48³ have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 6,759,052 (hereinafter "Suzuki") in view of Applicants' disclosure and FR 2816830 (hereinafter "Blin"; Equivalent to U.S. Publication No. 2004/0076649). Applicants respectfully disagree with the rejection; therefore, this rejection is respectfully traversed.

Initially it should be noted that Suzuki relates to an oily cosmetic composition which has good dispersing ability of powder (see, col. 1, lines 7-10). Suzuki obtains the oily cosmetic composition having good dispersing ability of powder by using derivatives of inulin associated with cyclic silicone oil. (Col. 2, lines 33-40 and Col. 3, lines 47-55). Suzuki's invention is illustrated in 47 examples of cosmetic compositions, among which only *one* (example 11) includes metal oxide coated glass particles. (Col. 14, line 58 through Col. 15, line 27).

³ As claims 15, 18, 20, and 26 have been cancelled in this response, the rejection of these claims is moot.

Applicants respectfully submit that Suzuki's disclosure of an oily cosmetic composition with good dispersing ability is far from the presently recited goniochromatic/light reflecting cosmetic makeup composition which is a unique combination of light reflective particles capable of creating highlight points visible to the naked eye and goniochromatic coloring agent capable of creating variation of the hue of the color according to the position of the observer renders a particular visual effect giving the perception of a three dimensional effect or pulping effect.

Accordingly, one of ordinary skill in the art would not look to Suzuki's disclosure of an oily cosmetic composition to obtain the presently recited goniochromatic/light reflecting cosmetic makeup composition.

Furthermore, in view of the unique example comprising metal coated glass particles, this document cannot be considered as pointing the ordinary skilled artisan toward the use of those particles. To the contrary, it is no less than eight examples that comprise as coloring agent either a metal oxide based compound or a mica based compound (see examples 12, 15, 31, 32, 34, 42 and 44). Consequently, one of ordinary skill in the art would have considered those compounds instead of the metal oxide coated glass particles.

Blin addresses the issue of improving and easing the dispersion of fibers for preparing a homogeneous cosmetic composition (see, page 1, paragraphs [0001] and [0004]), and proposes to rely upon an appropriate selection of fibers on the basis of the flattened shape of their section. (Col. 1, paragraph [0007]).

In contrast, as provided above, the presently pending claims recite a goniochromatic/light reflecting cosmetic makeup composition, comprising, *inter alia*, ***at least one goniochromatic coloring agent, wherein said at least one goniochromatic coloring agent is such that a variation Dh of the hue angle thereof of at least 30° is observed on a layer of such cosmetic makeup composition, for an illumination at 45° and a variation of the angle of observation of between 0° and 80° , at least one metallic compound having a spectral reflectance in the visible spectrum of at least 70% and being present in the composition in an amount ranging from 0.1% to 20% by weight relative to the total weight of the composition, wherein said composition having a mean gloss greater than or equal to 30 and creating an optical volumizing effect once applied to a support or a substrate.***

Accordingly, Applicants respectfully submit that Blin's objectives are unrelated with the objectives of pending claims, *i.e.*, providing a volumizing effect. As such, one of

ordinary skill in the art would not have consulted Blin to obtain the pending claims. Moreover, one of ordinary skill in the art would not have looked to Suzuki and Blin for attempting to obtain cosmetic compositions suitable for producing a volumizing effect.

Even if it is assumed that one of ordinary skill in the art would have considered the respective teachings of Suzuki and Blin, one of ordinary skill in the art would still not obtain the presently pending claims for at least the following reasons.

The flattened shape section fibers of Blin are not pointing toward goniochromatic coloring agent but encompass any fibers that may display such required flattened shape section. (Page 2, paragraphs [0028-0031]).

Suzuki teaches numerous coloring agents. (Col.5, lines 52 through Col.6, line 20). It is particularly interesting to note that the metal coated glass particles are not listed in the specification but are only *incidentally* mentioned in example 11.

As a consequence, one of ordinary skill in the art cannot find any guidelines in Suzuki and Blin that could point out the interest in selecting and combining goniochromatic coloring agent and metal layer coated glass particles.

In fact, one of ordinary skill in the art could have only combined the fibers described in Blin with the coloring agent listed in the specification on page 5, line 52 to page 6 line 20 of Suzuki where there is no mention of metal coated glass particles. Such a combination does not teach or suggest the presently pending claims.

As such, even the combination of Suzuki and Blin would not have yielded a goniochromatic/light reflecting cosmetic makeup composition, comprising: (a) at least one goniochromatic coloring agent; and (b) an amount of light reflective particles different from said at least one goniochromatic coloring agent, wherein the light reflective particles are particles of a synthetic substrate made from glasses and the light reflective particles are at least partially coated with at least one layer of at least one metallic compound, formulated into (c) a topically applicable, physiologically acceptable medium therefor, as presently recited in independent claim 1.

Therefore, in light of at least the foregoing, Applicants respectfully submit that independent claim 1 is not obvious over Suzuki in view of the present disclosure and Blin. Moreover, as claims 6-11, 16, 17, 19, 27-29, and 33-48 depend directly or indirectly from claim 1, claims 6-11, 16, 17, 19, 27-29, and 33-48 are not obvious for at least the same reasons.

Accordingly, withdrawal of the obviousness rejection is respectfully requested.

Double Patenting

Claims 1, 6-11, and 15-48⁴ have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 66-73, 111-124, 143 and 144 of co-pending Application No. 10/432,329 (hereinafter "the '329 application"). Applicants respectfully disagree with the rejection; therefore, this rejection is respectfully traversed.

The '329 application is directed to cosmetic compositions in which the effects of interferential particles are not affected by the introduction of additional coloring agent, and in particular pigments. (See paragraph [0010]).

As acknowledged in the Office Action, the '329 application fails to teach light reflective particles recited in the presently pending claims.

For the same reasons as discussed above, one of ordinary skill in the art would not have been prompted to use the metal coated glass particles of example 11 of Suzuki.

Instead one of ordinary skill in the art would have been motivated to use the coloring agents listed in the specification the '329 application (see, for example, page 5, line 52 to page 6, line 20 and the examples).

As such, Applicants respectfully submit that one of ordinary skill in the art would not have obtained the presently recited composition.

In light of at least the foregoing, Applicants respectfully submit that the obviousness-type double patenting rejection of independent claim 1 be withdrawn. As claims 6-9, 16, 17, 19, 21-25, and 27-48 directly or indirectly depend from claim 1, the obviousness-type double patenting rejection of claims 6-9, 16, 17, 19, 21-25, and 27-48 should be withdrawn for at least the same reasons.

Accordingly, withdrawal of the obviousness-type double patenting rejection is respectfully requested.

⁴ As claims 15, 18, 20, and 26 have been cancelled in this response, the rejection of these claims is moot. Moreover, as claims 10 and 11 were cancelled in the Response filed on December 28, 2006, the rejection of claims 10 and 11 is also moot.

New Claims

Applicants note that new claims 56-90 have been added. Applicants respectfully submit that exemplary support for the new claims can be found throughout the specification and claims as filed. Independent claim 56 recites ***a method of using a goniochromatic/light reflecting cosmetic makeup composition***, the composition comprising: (a) at least one goniochromatic coloring agent, wherein said at least one goniochromatic coloring agent is such that a variation Δh of the hue angle thereof of at least 30° is observed on a layer of such cosmetic makeup composition, for an illumination at 45° and a variation of the angle of observation of between 0° and 80° , and (b) an amount of light reflective particles different from said at least one goniochromatic coloring agent, wherein the light reflective particles are particles of a synthetic substrate made from glasses and the light reflective particles are at least partially coated with at least one layer of at least one metallic compound, having a spectral reflectance in the visible spectrum of at least 70% and being present in the composition in an amount ranging from 0.1% to 20% by weight relative to the total weight of the composition, formulated into (c) a topically applicable, physiologically acceptable medium therefor, said composition having a mean gloss greater than or equal to 30, the ***method comprising: applying said goniochromatic/light reflecting cosmetic makeup composition to a support or a substrate creating an optical volumizing effect once applied to the support or substrate.***

Applicants respectfully submit that none of cited references disclose or suggest all the features recited in independent claim 56 for at least the same reasons noted hereinabove.

Conclusion

In view of at least the foregoing amendments and remarks, reconsideration of the claims and allowance of the subject application is earnestly solicited. In the event that there are any questions relating to this application, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of this application may be expedited.

In the event any further fees are due to maintain pendency of this application, the Examiner is authorized to charge such fees to Deposit Account No. 02-4800.

Respectfully submitted,

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Date: September 20, 2007

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